

Message Text

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ORIGIN SCS-06

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2 COPIES, JUSTICE, JIM HERGEN, RM. 3613
-----043790 191646Z /46
O 191622Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY OSLO IMMEDIATE

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E.O. 11652: N/A

TAGS: CGEN

SUBJECT: JUDICIAL ASSISTANCE: HAGUE CONVENTION ON TAKING

OF EVIDENCE

REF: OSLO 2270 AND PREVIOUS

1. DEPT NOTES THAT EMBASSY HAS BEEN COMMUNICATING WITH MFA REGARDING TAKING OF DEPOSITIONS IN ACCORDANCE WITH ARTS 15 AND 16 OF HAGUE CONVENTION. DEPT BELIEVES THAT EMBASSY SHOULD IN FUTURE, UNLESS IT FORESEES REPERCUSSIONS FROM MFA, ADDRESS ITS INQUIRIES DIRECTLY TO THE CENTRAL AUTHORITY DESIGNATED IN THE CONVENTION. ART 2 OF THE CONVENTION REQUIRES THE DESIGNATION OF A CENTRAL AUTHORITY OF A SIGNATORY STATE TO RECEIVE LETTERS ROGATORY. ALSO, LIMITED OFFICIAL USE

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ART 15 CLEARLY INDICATES THAT APPLICATION FOR PERMISSION FOR A CONSULAR OFFICER TO TAKE DEPOSITION SHOULD BE MADE DIRECTLY TO THE CENTRAL AUTHORITY. THAT SECTION READS, "A CONTRACTING STATE MAY DECLARE THAT EVIDENCE MAY BE TAKEN BY A DIPLOMATIC OFFICER OR CONSULAR AGENT ONLY IF PERMISSION TO THAT EFFECT IS GIVEN UPON APPLICATION MADE BY HIM OR ON HIS BEHALF TO THE APPROPRIATE AUTHORITY

DESIGNATED BY THE DECLARING STATE." SEE MARTINDALE-HUBBELL FOR FULL TEXT OF THESE ARTICLES.

2. IN ACCORDANCE WITH THE DECLARATION ACCOMPANYING THE INSTRUMENT OF RATIFICATION OF THE KINGDOM OF NORWAY CONCERNING THE HAGUE EVIDENCE CONVENTION WHICH WAS DEPOSITED WITH THE MINISTRY OF FOREIGN AFFAIRS ON 8/3/72, THE CENTRAL AUTHORITY WITH RESPECT TO ARTICLES 15, 16, AND 17 IS THE ROYAL MINISTRY OF JUSTICE AND POLICE.

3. THE EMBASSY IS REQUESTED TO ASK THE ROYAL MINISTRY OF JUSTICE AND POLICE FOR PERMISSION, IF PERMISSION IS NEEDED, TO CONDUCT A DEPOSITION OF MR. BERNHARD LARSEN, A .NORWEGIAN CITIZEN WHO IS WILLING AND DESIRES TO TESTIFY ON JUNE 7. THE DEPOSITION IS NEEDED BY THE ATTORNEYS FOR THE DEEP SEA DRILLING COMPANY AND ODFJELL DRILLING AND ' CONSULTING COMPANY A/S, REGISTERED NORWEGIAN COMPANIES, AND THEIR INSURANCE COMPANIES, AND THEIR INSURANCE UNDERWRITERS WHO ARE ATTEMPTING TO PROVE THAT THEY ARE BEING ERRONEOUSLY SUED IN THE US DISTRICT COURT IN TEXAS FOR DAMAGES FOR THE DEATH OF JOHANNES TYSNES, A NORWEGIAN NATIONAL. THE TESTIMONY OF MR. LARSEN WILL BE USED TO SUPPORT THE NORWEGIAN COMPANIES'S MOTION TO OUST THE AMERICAN COURT OF JURISDICTION AND TO PRESERVE THE INTEGRITY OF THE NORWEGIAN COMPANIES WHICH BELIEVE THEY ARE NOT SUBJECT TO US JURISDICTION IN THE MATTER.
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4. WE SUGGEST THE EMBASSY VISIT THE ROYAL MINISTRY WITH A LETTER CONTAINING THE INFORMATION IN THIS CABLE. PLEASE IMPRESS UPON THE ROYAL MINISTRY THE URGENCY OF THE REQUEST FOR PERMISSION TO TAKE THE DEPOSITION OF THE NORWEGIAN NATIONAL IN THE INSTANT CASE.

5. PLEASE ALSO INDICATE TO THE ROYAL MINISTRY THAT THE UNITED STATES WOULD VERY MUCH APPRECIATE A GENERAL PERMISSION FOR THE TAKING OF DEPOSITIONS OF NORWEGIAN AND THIRD COUNTRY NATIONALS. IF A BLANKET PERMISSION IS NOT AVAILABLE THE EMBASSY IS REQUESTED TO ASK THE ROYAL MINISTRY WHETHER IT WOULD OBJECT TO THE TAKING OF DEPOSITIONS FROM NORWEGIAN NATIONALS OR THIRD COUNTRY NATIONALS UPON INFORMAL NOTIFICATION. FOR EXAMPLE, NAME OF WITNESS, BRIEF NATURE OF CASE AND DESCRIPTION OF THE PURPOSE OF THE DEPOSITION AND DATE OF DEPOSITION COULD BE PROVIDED.

6. WITH REGARD TO TAKING DEPOSITIONS FROM UNITED STATES CITIZENS, IT IS THE UNITED STATES' POSITION THAT THE RESERVATION TO ARTICLE 15 APPLIES TO ANY OTHER PARTY TO THE MULTILATERAL CONVENTION WITH WHOM NORWAY DOES NOT HAVE A

BI-LATERAL TREATY REGARDING THE TAKING OF DEPOSITIONS.
(SEE ARTICLE 32 WHICH STATES THAT THE PRESENT TREATY WILL
NOT DEROGATE FROM BI-LATERAL TREATIES ALREADY IN EFFECT

BETWEEN SIGNATORIES. ARTICLE 21 OF THE TREATY OF
FREINDSHIP, COMMERCE AND CONSULAR RIGHTS (1928).)

7. WE HAVE RECEIVED ANOTHER REQUEST TO TAKE DEPOSITION OF A

NORWEGIAN NATIONAL. CASE GOES TO TRIAL ON JUNE 12. THE
INTERESTED LAWYER DESIRES TO TAKE THE TESTIMONY OF A
WILLING NORWEGIAN NATIONAL BEFORE ANYONE AUTHORIZED TO
ADMINISTER AN OATH, E.G., IF NOT A CONSULAR OFFICER, THEN
THE EQUIVALENT OF A NOTARY PUBLIC IN NORWAY. CAN THE
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EMBASSY ALSO INQUIRE WHETHER IT WOULD BE POSSIBLE TO HAVE
DEPOSITIONS TAKEN BEFORE A NORWEGIAN OFFICIAL AUTHORIZED
TO ADMINISTER AN OATH OUTSIDE CONSULAR PREMISES. (NOTE,
THIS IS NOT A LETTER ROGATORY SITUATION.) ALSO, ARE COURT
REPORTERS AVAILABLE IN OSLO?

8. WITH RESPECT TO PARA 5 OF REFTTEL, DEPT HAS SPOKEN WITH
ROBERT JULIAN. PLEASE ADVISE HIM BY CABLE OF RESULTS OF
EMBASSY EFFORTS. VANCE

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